

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM MINUTES

Friday, February 12, 2021 - 10:00 a.m. - 12:00 p.m.

(action items are in red)

Court Forum Members Present:

Hon. Lawrence King (Chair)
Colorado River Indian Com. Court

Hon. Randall Howe (Vice Chair)
Az. Court of Appeals, Division I

Hon. Douglas Rayes
U.S. District Court

Judge Michael Latham
Apache County Superior Court

Maria Morlacci
Arizona Attorney General's Office

Virjinya Torrez
State Bar of Arizona

April Olson
Public member

Participants/Visitors Present:

Judge Dan H. Michael, Juvenile Court Judge in Memphis, TN & President of NCJFCJ

Judge Yvette Ayala, Chief Judge, Fort Mohave Tribal Court

Judge Vania, Juvenile Judge for White Mountain Apache

Chief Judge Ida Wilber, Yavapai-Apache Tribal Court

Barbara Atwood, University of Arizona Law College

Marjorie Eagleman, BIA

Verna Johnson, ITCA

Sheina Yellowhair, AZ Complete Health

Dawn Williams, AG's Office

Chia Halpern Beetso, Tribal Law and Policy Institute

Kiersten Prince, Salt River Pima-Maricopa Indian Community

Administrative Office of the Courts (AOC) Staff Present:

David Withey, Chief Counsel, Legal Services

Amanda McQueen, Legal Specialist

Joe Kelroy, Juvenile Justice Services Division Director

I. Registration (Log in to meeting 5 minutes before start time)

II. Call to Order - 10:03am

III. Introduction of members and participants.

IV. Moment of Silence for Judge Claudette White.

V. Approval of Minutes: [10-16-2020 Court Forum Minutes](#) Judge Rayes Motioned.
Seconded by Judge Howe.

VI. Meeting Business

A. Four Corners Cross-Jurisdictional Conference - Attendance and Ratings Amanda McQueen & Judge King

5 Webinars have been broadcasted and recorded. All recordings and materials are available here: [Southwest Cross-Jurisdictional Webinar Series \(azcourts.gov\)](https://www.azcourts.gov/webinars)

1. Cross-Jurisdictional Cooperation and Collaboration:
 - i. Registered: 36
 - ii. Survey data not available (not distributed in time)
2. Juvenile Dependency:
 - i. Registered: 108
 - ii. Average rating: Excellent. “Good Job” “Very Informative”
 - iii. Suggestions and remarks:
 1. “It would be interesting to have a panel of the children, now adults, in how ICWA impacted them.”
 2. “Tribal programs that are working with counties to improve ICWA compliance and qualitative data on how tribal families and communities view the ICWA courts. Are they satisfied? Is it working?”
3. Tribal Jurisdiction:
 - i. Registered: 268
 - ii. Average rating: Good/Excellent “Thank you very much”
 - iii. Suggestions and remarks:
 1. More time on Orders of Protection
 2. “All of the content could have used more time. Particularly the enhanced DV jurisdiction portion.”
 3. More time on “The MMIWG process and the process of shared information between the NCIC and Namesis. Also, more information about the MMIWG state coordinators.”
 4. Additional Courses requested for: “TLOA update” and “The actual data of missing women who are recovered vs those who were not found.”
4. State Jurisdiction:
 - i. Registered: 79
 - ii. Average rating: Excellent “I appreciated all the sessions. Very good and informative.” “I felt everything was good and would like hope in the future with no more Covid, a conference would be great and would allow more time for all sessions.”
 - iii. Suggestions and remarks:
 1. More time requested on Guardianship and “How tribes are facilitating involuntary commitments through tribal court orders if people in need of treatment are not going to state facilities, such as the state hospitals. Are contracts with private facilities being used?”
 2. Suggested less time on: “Information from California, a PL280 jurisdiction. I think this is information that just confuses people without a background in federal Indian Law.”
 3. Additional Courses requested on: “Major Crimes Act, Treaties and crimes committed within ceded territory, jury of no peers within ceded territories, Tribal Probation and Parole structure, Tribal Lay Advocacy non-profit organization(s)”

and "Tribal sovereignty issues in tribal court civil suits against tribes, such as wrongful termination."

5. Juvenile Delinquency:

- i. Registered: 85
- ii. Average rating: Average/Good "...I would like to see it in person (a sign of our times). As someone said during the session it will be nice to see everyone in person."
- iii. Suggestions and remarks:
 1. "There was only one power point...which was great...it's hard to follow long dialogues without a guidance system"
 2. Additional Course suggestion: "Real officers in both sides, tribe and the courts, sharing how they work together"

B. Cooperation Ideas from Conference

State/Tribal/Federal

1. Defendants in common – defer to other jurisdiction, credit in sentencing – community service, use culturally sensitive options, pretrial/presentence

Discussion:

Judge Howe mentioned that the UCCJEA should be considered during the family court matters. Mr. Withey confirmed that the tribes are not typically parties to these matters, which is an issue. Judge Howe asked if a treaty agreement would make that possible? Mr. Withey says it is possible to enter inter-government agreements, but it is usually done as a more informal agreement. There is a need for communication, especially prior to sentencing to expand the resources.

2. M&M Indigenous Persons – women, juvenile runaways, trafficking info exchange

Discussion:

*Mr. Kelroy is a member of the task force under the governor's office and there's a whole infrastructure in the state, including a tribal member from Navajo. They are looking to push out training, information and education. They also are working to expand resources to the federal level. There's a website under the human trafficking task force with more information. Judge King noted that the U.S. Attorney Office of Legal Education, with Leslie Hagan, just put on a 2-day webinar regarding strategies for developing a coordinated response to missing and murdered indigenous women in response to Operation Lady Justice that was very good. Not all tribes have access to the TAP program, and even when they do, the data is hit or miss. **Mr. Kelroy will pursue that question more as a member of the task force.***

*Mr. Withey suggests that a list of who is in contact with each system. What tribal members are in contact with the AZ criminal justice system? That list could be helpful to find some of those missing people. Mr. Kelroy agrees that the networking alone has been very helpful on the probation side. The summits have also aided with this. There's also a New Mexico statute regarding notifying tribes of delinquency, which was Judge Romero's talking point in Judge King's recent Court Forum Webinar (Panel 5). ICWA notification to tribes and some dialogue or involvement with the tribe should be considered in the federal law for juvenile cases. **Judge Michael is glad to take that idea to his state-tribal ad-hoc committee.***

3. Probation supervision communication, cooperation & coordination

State/Tribal

4. Customary adoption without termination, co-guardianship

Discussion:

CA & NM have customary adoption by statute, which would be good examples for AZ. Professor Atwood says that a customary adoption statute may not be needed in AZ. Ms. Williams says that it really needs to be tribe-driven and there hasn't been much effort so far. Gila River Indian Community has a provision in its constitution that allows, for an adoption, a permanent suspension of parental rights instead of termination. By doing that, the child is still eligible for state adoption subsidy. It seems to be working pretty well so far. She guesses more tribes will follow this example without necessarily needing a statewide statute. Professor Atwood mentioned that Pascua Yaqui has recently added a customary adoption provision to its code.

5. State Court Committees – tribal members

Discussion:

We encourage anyone to contact the staff of these committees identified on membership lists. Occasionally, committees have asked the court forum for volunteers as well.

6. Tribal DV Criminal Jurisdiction – misunderstanding, education of state & fed personnel, extradition, competency, victim services, appointment as Special Assistant US Attorneys (SAUSA)/Special Deputy County Attorneys

Discussion:

Pascua Yaqui and Gila River Indian Communities are both pilot tribes for this. Ms. Beetso is a coordinator that facilitates conference calls on this subject. If any other tribe is interested, there's an upcoming virtual meeting in March that is free to attend. There is also funding for airfare and accommodations when in-person. She can send this information to Amanda to send out to the Court Forum. Mr. Withey reminded the group that this was presented well by Judge Flores in the recent Court Forum Webinar (Panel 3) as well, which is available to watch on the Court Forum's website. *Judge King says Ms. Beetso can provide educational materials that are aimed at people in the state and federal justice system, to explain it to them. This would be helpful in New Judge Orientation and annual judicial conferences.* Professor Atwood added that the reauthorization of the VAWA is currently before congress and it contains and expansion of this special DV Criminal Jurisdiction for tribes in the area of offenses against children.

7. Functionality of the tribal/state involuntary commitment process

Discussion:

We know that the AZ state hospital (ASH) is usually full, so private providers have to be available when the state hospital isn't. This requires working through the regional behavioral health authorities to get these services paid for. The mental health system must be working parallel to the court system from the beginning of the process.

8. Juvenile Detention Alternatives Initiative (JDAI)

Discussion:

Mr. Kelroy says we have 8 AZ counties currently involved who have embraced the initiative. It is leaning more into community work. It's a collaborative of schools, law enforcement, probation support, and a judge who examine the data of who is in detention and what we have for interventions and assessments. They've developed a model of policies and protocols through crossover work between DCS and the courts, which would also work well between the state courts and the tribes. Ms. Williams says they look at the residency of the kid to determine jurisdiction when filing dependency cases.

State

9. Tribal judge access to juvenile records and data

Discussion:

How do we bridge the gap to provide direct access? We have data-sharing agreements with other state agencies, but Mr. Withey is not aware of a data-sharing agreement with any tribes yet.

10. ICWA courts – specializing DCS units, attorneys, common training, pre-hearing problem solving, relative placement, pre-hearing active efforts state/tribal partnership

Discussion:

Pima county is already doing this and a Maricopa ICWA Court is in the works. There may be other counties that have enough tribal population coming into their courts to consider this option.

State/Federal

11. Delinquency notice to tribes on detention/petition

Discussion:

Does the federal court provide information to tribes when a kid is detained for a federal offense? Judge Rayes says they never see this happen and isn't sure what they provide.

Which of these topics should be prioritized? Judge King suggested doing a poll.

C. Arizona State Courts Racial Justice Initiatives – [click here](#)

1. Representative Juries and Juror Service
2. Disproportionate Minority Contact in Juvenile Justice System
3. Enhance Diversity of Bench and Court Personnel

Discussion:

Mr. Withey reviewed the linked brochure. Judge King also stressed the importance of diversity in law clerks and externs. Judge Rayes says they have externs every semester in his court and every summer they also pick up an extern through a minority program. Judge Ayala pointed out that the National Center for State Courts also has courses in court management and court function. Many of those courses are free. Judge Howe requested the brochure be sent to him. Ms. McQueen will email it to him. Ms. Torrez asked if the Disproportionate study didn't take account of native youth and only focused on Latino and African American youth. Mr. Kelroy will send her the report from his webinar presentation.

D. Tribal Court Involuntary Commitment (TCIC) Workgroup Report Guardianships and Other Issues – David Withey

Workgroup: Erin Cohen, Virjinya Torrez, Judge Little, Judge Ayala & Sheina Yellowhair

Members, please provide questions regarding ASH admission and operations.

Discussion:

We need to follow-up with ASH in terms of how their admission policies work and what we should expect. Also, what are the other options? Sheina Yellowhair and Judge Ayala were added to this workgroup. Judge King says ASH was supposed to give us a workflow of someone being admitted. Ms. Morlacci had previously sent contact information for the Chief Counsel of the education and health section at the AG's Office. Mr. Withey will request a flow chart and put together a couple questions for ASH. Ms. Torrez brought up previous discussion about needing IGAs with tribes or getting a draft IGA.

E. Judicial Education regarding Indian law and Jurisdiction Workgroup Report

Workgroup: Virjinya Torrez and Judge Clyde. (Open for additional workgroup members)

Work underway reviewing education materials.

Discussion:

Mr. Withey has reached out to Judge Osterfeld to see if he is able to continue in the workgroup project. We will need additional volunteers or connect with committees to draft language for each section. Ms. Torrez will forward the notes to Mr. Withey. Mr. Withey will follow up with Judge Osterfeld and reach out to judges on committees to help draft.

F. Membership

We need a new JP or Municipal member. Suggestions are welcome.

Virjinya Torres suggested two JPs:

1. Deborah Ann Begay (Maricopa County Justice Court, Moon Valley Precinct)
2. Erica Cornejo (Pima County Justice Court, Precinct Two)

Discussion:

Mr. Withey will contact the Pima County JP first to provide some balance in the forum with being from Pima County. Any new Chief judges are also welcome to join us.

VII. Upcoming Court Forum Meeting Dates

- **May 21, 2021** (Backup date: June 11, 2021)
- **September 24, 2021** (Backup date: October 15, 2021)

Please notify us if you foresee any potential conflicts with the above dates.

VIII. Open Forum for Discussion of Additional Issues of Concern

none

Meeting Adjourned at 11:45am